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October 15, 2007

New Mexico Oil Conservation Division
Attn: Mark E. Fesmire, P.E. Mark Fesmire
1220 South St. Francis Drive
Santa Fe, NM 87505

VIA FACSIMILE/MAIL
(505) 476-3462

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RECEIVED

Re: **Written Comments on Proposed New Pit Rule**

Dear Mr. Fesmire,

On behalf of this firm's client, the City of Lovington, New Mexico, please accept the following comments regarding the proposed new pit rule.

Comment 1

The 50 foot to groundwater siting requirement found in subparagraphs 10.A.(1) (a), 10.A.(2)(a) and 10.c.(1) should be changed to "100 foot".

The 50 foot siting requirement creates an un-necessary risk to groundwater. Incidents of Groundwater contamination at levels of 100 feet below ground surface are well documented in NMOCD records.

Comment 2

The Rule should provide for public notice, public comment and public participation for all applications containing requests for exceptions and waivers, and requests for on-site burial. Notice should be given to the appropriate county, city and tribal governmental agencies. Lastly, notice should be given to those persons who have requested notification of such applications and requests for on-site burial.

Comment 3

All provisions for on-site burial found in subparagraphs 9.c.(1), 10.c.j 11.j., 13.B.(2), 13.F. and 13.G.(2) should be deleted for the following reasons.

1. On-site burial its not a reasonable use of the surface estate and would constitute a trespass. Authorization of on-site burial by NMOCD would constitute a taking.
2. On-site burial will create thousands of permanent, unmonitored waste dumps across the state of New Mexico. Such permanent, unmonitored waste dumps create an undue risk to the environment and contradict current public policy in this state regarding the disposal of wastes.

Comment 4

All references in the Rule to "appropriate division office" regarding the processing and approval of pit permit application exceptions and waivers and requests for on-site burial should be removed. The local offices do not have sufficient staff, expertise or training to properly evaluate these types of request. The current proposed Rule puts total discretion in the division offices for allowing exceptions and waivers and for granting on-site burial requests in pit permit applications. As proposed the Rule contains no standards by which such discretion is to be exercised.

One need look no further than the handling of the Quest Cherokee LLC, APD matter (case no. 13870) by the local Hobbs office to determine that such discretion is not appropriate. This local office failed to comply with the requirements of the Oil Conservation Division's Order entered in this case. How can it be relied upon to exercise unfettered discretion as proposed?

Thank you for the opportunity to comment on the Proposed Pit Rule.

Sincerely,

HEIDEL, SAMBERSON, NEWELL, COX & MCMAHON

By: *C. Gene Samberson for*
Patrick B. McMahon

PBM:jo